

EXHIBIT 1

1

2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481-rdd

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6 In the Matter of:

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8 DPH HOLDINGS CORP., ET AL.,

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10 Debtors.

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14 U.S. Bankruptcy Court

15 300 Quarropas Street

16 White Plains, New York

17

18 June 21, 2011

19 10:10 AM

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21 B E F O R E:

22 HON. ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

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2 Hearing Re: Whether the Reorganized Debtors' Proposed Amended
3 Complaints meet the Rule 8 pleading standard pursuant to
4 Twombly and Iqbal and also comply with the Dismissal Order
5 entered by this Court on September 7, 2010.

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7 Hearing Re: Whether certain individual preferential transfers

8 alleged in the Proposed Amended Complaints, but not alleged in
9 the Original Complaints, should now be dismissed because they
10 do not relate back to the dates the Original Complaints were
11 filed.

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13 Hearing Re: With respect to Defendants that raise a contract
14 assumption defense at the hearing, whether the factual disputes
15 between the Reorganized Debtors and those Defendants warrants
16 further discovery and investigation.

17

18 Hearing Re the Fourth Extension Challenges.

19

20 Hearing Re: The procedures to be implemented to adjudicate the
21 case-sensitive, nonpleading-based, factual issues that the
22 Defendants originally raised in their Motions to Vacate and
23 Dismiss, and then raised again in opposition to the Motions.
24 Those issues include, by way of example and not limitation,
25 issues related to notice and prejudice in connection with the

1 Rule 4(m) orders.

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25 Transcribed by: Dena Page

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1 that plaintiff doesn't have that view, and that it's reliant on
2 factual issues as to whether there was notice or not.

3 MR. APPLEBAUM: I don't think they've raised any
4 factual issues in response to the two affidavits we submitted
5 in connection with our paper.

6 THE COURT: Okay.

7 MR. APPLEBAUM: We've seen none.

8 THE COURT: All right. But I don't know if they're
9 still opposing it. That --

10 MR. APPLEBAUM: We've seen none.

11 THE COURT: All right.

12 MR. APPLEBAUM: I mean, there may be, but we've seen
13 none.

14 THE COURT: Before -- I mean, I'm laying out issues
15 that I want the plaintiff to respond to. There's another issue
16 that I acknowledge I did not focus on sufficiently at the July
17 hearing -- because it -- I think I basically crept up in oral
18 argument. The order I've been focusing on here is the fourth
19 one, which is the only one that's at issue in this motions.
20 And that order recites -- based upon a recital in the
21 underlying motion, as well as, I believe, a statement on the
22 record by the debtors' counsel, Ms. Marafioti that the motion
23 was served as set forth in my standing order for service in the
24 case -- your motion as well as others takes issues with that
25 cite, attaching the certificate of service.

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1 And I think that's a serious issue here. Separate and
2 apart from the other ones. The order -- the supplemental case
3 management order dated March 17th, 2006 states that, "All
4 filing shall be served via overnight mail upon all parties with
5 a particularized interests in the subject of the filing, as
6 well as to the master service list." And the motion that was
7 filed on October 2, 2009 states that, "Notice of this motion
8 has been provided in accordance with the supplemental order."
9 And it doesn't appear to have been. So, I mean, I think that
10 also goes to Rule 60.

11 The argument that was made in the motion at the
12 hearing was twofold, as you all point out. First of all, that
13 the debtors wanted more time given their drastically changed
14 circumstances. And secondly, that it was quite possible that
15 in light of that more time they'd drop more people and would
16 not pursuit the lawsuits against them. If people are on notice
17 of that then one can take the view that, well, you know, maybe
18 they're happy not to be served yet. But if you're not on
19 notice of then that's a sep -- you know, it's a different
20 issue, and that's the overall notice points you made.

21 But there's a subset of that, which is, it does not
22 appear to me that that representation was correct as to the
23 service of the motion.

24 MR. APPLEBAUM: Well, I certainly -- speaking for my
25 client only, it's correct -- you're correct on both counts.

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1 THE COURT: All right. Okay.

2 MR. APPLEBAUM: So I guess now I'm sort of at a loss
3 as to where --

4 THE COURT: All right. So I basically have -- these
5 are the points I have for the debtors here. Given that --
6 given the situation where literally there was no notice; that's
7 situation one. And that's what's asserted by -- is it [Doh'-
8 shi] or [Dah'-shi]?

9 UNIDENTIFIED SPEAKER: Detroit Products.

10 THE COURT: What?

11 MR. APPLEBAUM: [Doh'-shi].

12 UNIDENTIFIED SPEAKER: Detroit Products, formally
13 known as --

14 THE COURT: Detroit Products, okay, Detroit Products.
15 What's the response when there's literally no notice? Second,
16 what's the response on the supplemental case management order
17 and the representation of the motion not apparently being true.
18 And under those scenarios -- if there's not a satisfactory
19 answer on those two, isn't this really -- this is a matter of a
20 law, isn't it? I mean, can I deal with this now?

21 We don't have to get into whether there was notice or
22 not because there doesn't appear to have been any notice and
23 there doesn't appear to be any response on that issue.

24 MR. APPLEBAUM: I think we'll sit down, Your Honor.

25 THE COURT: Okay.

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1 narrow grounds. That is that the Court -- that nobody can
2 change their reasons for a subsequent extension, which is not
3 at all what global crossing says. It says you can't now
4 include that at some later in point time unnamed and
5 unidentified defendants. That's what it says, it doesn't go
6 beyond that.

7 Now, again, I believe the defendants were frustrated
8 because they didn't get some of the issues addressed that they
9 thought ought to be, but we're properly before the Court today,
10 and I think that whole notice discussion is a matter for
11 another time, not here.

12 THE COURT: I guess, my point though, ultimately, is I
13 understood a fair matter on this point at the July hearing. I
14 mean, it basically said if you really didn't get any notice of
15 this then you shouldn't be sued. I mean, I -- so why are we
16 still dealing -- I mean --

17 MR. SENDEK: Well, there was a question at that time
18 of notice and what is notice and what frame -- what type of
19 notice would be sufficient --

20 THE COURT: All right. But if you're --

21 MR. SENDEK: -- whether --

22 THE COURT: They're asserting they weren't even on the
23 matrix, and they weren't served with motion -- and I'm very
24 troubled by the fact they weren't served by the motion.

25 MR. SENDEK: They haven't asserted --

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1 not necessarily that simple?

2 THE COURT: Okay.

3 MR. KLEIN: Doshi Prettl and I've -- Detroit -- they
4 now have a new name and I'm drawing a blank on what it is, but
5 they're the ones who brought the primary motion here. They
6 were represented in this action. They filed the claim. Their
7 attorney withdrew prior to this action. So, it's -- when we
8 dig into the facts, it's not always going to be as black and
9 white, as note --

10 THE COURT: Okay.

11 MR. KLEIN: -- but that's obviously only illustrative.
12 It doesn't deal with the broader issue.

13 THE COURT: But they didn't get notice of the motion,
14 though.

15 MR. KLEIN: They didn't get notice of the motion, Your
16 Honor. Or I shouldn't say they didn't -- I will --

17 MS. HAFLEY: We don't know.

18 MR. KLEIN: I will accept, but no, I will --

19 THE COURT: Well, there's a stipulative service. I
20 mean, that's prima facie evidence of who got notice.

21 MR. KLEIN: I will accept for purposes of this
22 discussion that there are defendants who did not receive formal
23 service --

24 THE COURT: Okay.

25 MR. KLEIN: -- of the motions, you know, that needs to

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1 a situation that other than through some miraculous
2 happenstance, no one could have --

3 THE COURT: I appreciate -- that's why I say there's a
4 spectrum here.

5 MR. KLEIN: Okay. Thank you, Your Honor.

6 THE COURT: Okay.

7 MR. NAYAK: Your Honor, Mahesh Nayak again. I'm just
8 wanting to get clarification. You mentioned some time frames
9 that you would like to see this within --

10 THE COURT: Yes.

11 MR. NAYAK: -- and I also want to understand from Your
12 Honor how you view this should happen, whether it should be
13 part and parcel of the -- is this a predicate or a predecessor
14 to the debtors' motion for leave to amend that they can
15 affirmatively somehow establish that service was accomplished
16 to Your Honor's satisfaction, that we would oppose that, there
17 would be a hearing on it in advance of a motion for leave to
18 amend? Because it seems like a motion for leave to amend, Your
19 Honor --

20 THE COURT: That's a good question. I think it partly
21 depend -- I'm not sure there's a difference as far as burden is
22 concerned; if I treat this as step two of their leave to amend
23 or if I treat this as everyone's request for me to take another
24 look at the October order since ultimately the issue is -- I
25 think there's -- in each case, there's a fairly modest burden

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1 on the debtor in either case. But maybe I'm wrong about that.

2 I mean, ultimately it is part of -- I think a 15
3 showing to me, ultimately, because it's the futility argument.
4 Rule 15 is -- you know, it's a fairly light burden, ultimately,
5 but -- and I think the futility point here goes back to
6 reconsideration of my order so again, there's some slight
7 burden on the debtor.

8 MR. NAYAK: Slight burden on the debtor with respect
9 to the --

10 THE COURT: Under either -- whether I do it under
11 either approach. But I guess it's probably best done as part
12 two of a Rule 15 motion.

13 UNIDENTIFIED SPEAKER: -- the timing, Your Honor?

14 THE COURT: Well, I think step one of this part two
15 would be the defendants' assertion of their facts as to notice
16 and step two of it would be the debtors' response.

17 UNIDENTIFIED SPEAKER: Understood.

18 MR. KLEIN: Your Honor, I assume this is only with
19 respect to defendants who have filed an affidavit as to filing
20 notice?

21 THE COURT: Have or will? I mean, we specifically
22 didn't make notice part of this hearing, so --

23 MR. KLEIN: Well, no but there's -- the relevant
24 motions were filed a year ago.

25 THE COURT: Oh, you don't have to refile one -- you

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1 MS. HAFLEY: Well, and it -- I think what --

2 THE COURT: If it did happen, it's different. Then
3 you're going to be entitled to discovery and you'll get to the
4 next stage of this saga but if they're not on the certificate
5 of service, then I think the burden's more on you guys at that
6 point.

7 MS. HAFLEY: In regards to timing, then, Your Honor,
8 since we don't know yet how many defendants are going to, in
9 the next several days --

10 THE COURT: Right.

11 MS. HAFLEY: -- provide us with declarations, I would
12 just ask that we set the time for the debtors to respond
13 until -- and maybe set a date in which the defendants will
14 provide us with their declarations and we'll look at the number
15 then and set a time for us to respond. I think we're at this
16 stage kind of doing that in a vacuum without knowing.

17 THE COURT: Okay. I think that's fair.

18 MS. HAFLEY: Thank you.

19 MR. WURST: Judge, that's exactly the point I wanted
20 to address. This -- I'm sorry, Jeff Wurst for Wells Fargo,
21 case 07-02597, to be distinguished from the 02720.

22 The gestation period for this motion is now longer
23 than that for a human being. This motion was filed September
24 7th and it's now nine and a half months --

25 THE COURT: Well, I know, but that's not -- I mean,

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C E R T I F I C A T I O N

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4 I, Dena Page, certify that the foregoing transcript is a true
5 and accurate record of the proceedings.

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11 Date: June 24, 2011

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